

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.785 of 2009

IN

Civil Writ Jurisdiction Case No. 5270 of 2009

- =====
1. Ravi Prakash, son of Shri Raghunath Ram, resident of vill-Piunibag Baswaria, Ward No. 25, Police Station-Bettiah, District-West Champaran, at present posted and working as Panchayat Teacher in Newly created Govt. Primary School, Purandar Bathua, Anchal-Fulwaria, District-Gopalganj.
 2. Meera Kumari, wife of Shri Dinesh Ram, resident of village and P.O. Bathua Bazar, Police Station-Fulwaria, District-Gopalganj, at present posted and working as Panchayat Teacher in newly created Govt. Primary School, Purwi Tola Larhpur, Anchal-Fulwaria-District-Gopalganj.
 3. Rinki Kumari, daughter of late Ram Narayan Rai, resident of village Girdhar Parsa, P.O. Bhagwat Parsa, P.S. Fulwaria, District Gopalganj, at present posted and working as Panchayat Teacher in Govt. Primary School, Balepur Gaddi Tola, Anchal Fulwaria, District Gopalganj
 4. Sinni Praveen, wife of Mahtab Alam resident of village Bathua Bazar, P.S. Fulwaria, District Gopalganj, at present posted and working as Panchayat Teacher in Govt. Primary School, Balepur Gaddi Tola, Anchal Fulwaria, District Gopalganj
 5. Meera Kumari, daughter of Shri Ram Lakhan Ram, resident of village Kotwa Khem, P.O. Bathua Bazar, P.S. Fulwaria, District Gopalganj, at present posted and working as Panchayat Teacher in newly created Govt. Primary School, Purandar Bathua, Anchal Fulwaria, District Gopalganj
 6. Khushbu Raj, daughter of Shri Prabhu Jee Sahu, resident of village Lakshan Tola, P.O. Songarhwa, P.S. Fulwaria, District Gopalganj, at present posted and working as Panchayat Teacher in Newly created Govt. Primary School Larhpur Purwi Tola, Anchal Fulwaria, District Gopalganj

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Divisional Commissioner, Saran Division at Chapra.
5. The District Magistrate, Gopalganj.
6. The Sub-Divisional Officer, Hathua, District-Gopalganj.
7. The District Education Officer, Gopalganj.
8. The District Superintendent of Education, Gopalganj.
9. The Sub-Divisional Education Officer, Gopalganj.
10. The Block Development Officer, Fulwaria, Distt-Gopalganj.
11. The Block Education Extension Officer, Fulwaria, District-Gopalganj.
12. The Gram Panchayat Raj Bathua Bazar, Anchal-Fulwaria, District-Gopalganj represented through its Mukhiya.
13. The Panchayat Secretary, Gram Panchayat Raj Bathua Bazar, Anchal-Fulwaria, District-Gopalganj.
14. The Member, District Teacher Employment Appellate Authority, Gopalganj.
15. Krishnadeo Bhagat, son of Late Mukhlal Bhagat, resident of village-Sawnabipatti Tola Bhanpur, P.O. Bathua Bazar, P.S. Fulwari, Dist-Gopalganj.
16. Vikash Kumar, son of Diwakar Lal, resident of village-Larhpur, P.S.-Fulwaria,

District-Gopalganj.

17. Sanju Kumari, wife of Arun Kumar Srivastava, resident of village-Larhpur, P.O Bathua Bazar, P.S. Fulwaria, District-Gopalganj.

18 Rani Kumari, daughter of Janak Sah, wife of Surendra Gupta, resident of village and P.O. Lamichour, P.S. Bhore, District-Gopalganj.

19. Amrita Kumari, daughter of Raghav Lal, resident of village-Lashpur, P.S. Fulwaria, District-Gopalganj.

20. Kumari Urmila Kushwaha @ Urmila Kushwaha, wife of Vidya Singh, resident of village-Shukrawalia, P.O. Bathua Bazar, P.S. Fulwaria, District-Gopalganj.

21. Geeta Singh, wife of Manoj Kumar Singh, resident of village-Bathua Bazar, P.S. Fulwaria, Dist-Gopalganj.

22. Sunita Manjhi, wife of Ramesh Kumar, resident of village-Lakari Choubey, P.O. Bathua Bazar, P.S. Fulwaria, District Gopalganj.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Adv. & Mr. Mukesh Kumar Singh

For the Respondents 15,17.18.20,22 : M/S Y.V.Giri, Sr. Adv.

Mr. Sanjay Kumar Pandey-5 & Ms Anita Kumari

For the State

Mr. Sanjay Kumar, A.C. to G.A.5

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-11-2015

The present intra-court appeal is directed against the judgment and order dated 24-4-2009 passed by the learned Single Judge in C.W.J.C.No. 5270 of 2009 (Ravi Prakash & ors. Vs. The State of Bihar & ors.).

2. The appellants herein were the writ petitioners. We have heard the appellants and the contesting respondents.

3. Pursuant to the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules 2006 (hereinafter



referred to as the Rules), an Advertisement was issued for appointment of Panchayat Teachers in different Gram Panchayats, including Gram Panchayat-Bathua Bazar, District-Gopalganj. The writ petitioners and others applied. The writ petitioners were selected and appointed as Panchayat Teacher, and they started working. In the meantime, alleging a lot of irregularities having been committed, representations were filed before the District Magistrate-cum-Collector, Gopalganj. The District Magistrate-cum-Collector, Gopalganj, constituted an Enquiry Committee, headed by the Sub-divisional Officer. The Enquiry Committee having made enquiries, submitted a report to the District Magistrate-cum-Collector, Gopalganj, with the finding that there had been gross irregularities in the process of selection and appointment. Based upon that enquiry report, the Collector-cum-District Magistrate, Gopalganj, then directed the Block Development Officer, who, in terms of Rule 18 of the said Rules, was the appellate authority over the selection committee, to take action in accordance with the report. The Block Development Officer then, based on the said report, ordered for cancellation of the selection and appointment of the writ petitioners, and directed the Panchayat Samiti to reconduct the selection process and make fresh selection. The writ petitioners being aggrieved by the order of the Block Development Officer and the consequential orders,

filed a writ petition in this Court, being C.W.J.C.No. 1620 of 2008, which was allowed on 8-12-2008, along with other analogous writ petitions.

4. On behalf of the writ petitioners two contentions were raised in those writ petitions. Firstly, there being a statutory authority in the shape of Block Development Officer (Rule 18), the Collector-cum-District Magistrate could not interfere in the matter or issue direction to the statutory authority, and as such the action of the Block Development Officer, pursuant to the order and direction of the Collector-cum-District Magistrate, was wholly without jurisdiction and needed to be set aside. It was secondly contended that the Block Development Officer also could not have taken note of or relied upon or referred to the enquiry report, which was an ex-parte enquiry report without notice to the writ petitioners, and may have drawn up behind the back of the writ petitioners. The writ court accepted both the contentions. It held that the Block Development Officer was not an officer subordinate to the Collector-cum-District Magistrate. He was exercising an independent statutory authority. The Collector-cum-District Magistrate could not have issued any direction to the Block Development Officer, much less to act in a particular manner with reference to Rule 18 of the Rules. The writ court also held that the reliance, as placed by the Block Development Officer upon the



enquiry report, was misconceived, inasmuch as the enquiry report was a report, undisputedly prepared ex-parte without notice to the writ petitioners. On the aforesaid finding of law and fact, the writ petitions were allowed, and the orders dismissing the writ petitioners and others were set aside. However, an observation was thereafter made that the statutory authority of the Block Development Officer under Rule 18 of the Rules having now been conferred on an independent Tribunal at the District level, if any one was aggrieved by the appointment, he could approach the Tribunal, which could decide the matter in accordance with law.

5. It now appears that the matter was taken to the Tribunal by some of the candidates, who are not the writ petitioners. The writ petitioners were noticed. The writ petitioners allegedly did not file any rejoinder. The case of the writ petitioners was that on two days they appeared before the Tribunal, but the Tribunal held out to them that there was no necessity to file any reply. However, the Tribunal then proceeded, and mostly based upon the earlier ex-parte enquiry report, held that the appointments of the writ petitioners were illegal, and set aside their appointments. The Tribunal then ordered the Gram Panchayat to conduct fresh selection process from the applicants already there, and appoint them. Accordingly, the contesting respondents to the exclusion of the writ petitioners were

appointed. This is what brought the writ petitioners to this Court in the present writ petition.

6. They submitted before the learned Single Judge that the Tribunal has relied on the same ex-parte enquiry report, the use of which had been disapproved by this Court in the earlier proceedings on the ground that the enquiry report was ex-parte and hence could not be used. It was, thus, urged before the learned Single Judge that the order of the Tribunal had, thus, stood vitiated on the same ground, as the order of the Block Development Officer in the earlier round of litigation. Notwithstanding the fact that in the earlier round of litigation using of the same very enquiry report was disapproved by this Court, this time the learned Single Judge has held that it was open for the writ petitioners to file documents and pleadings to contradict the enquiry report, and to show that it was wrong, and not having done so, it must be assumed that they have nothing to say as against the said enquiry report, and thus the learned Single Judge has sanctified the use of this enquiry report for the purposes of cancelling the appointments of the writ petitioners, thus dismissing the writ petition. Hence, the intra-court appeal.

7. We are not concerned with the merits of the matter. It lies ill for a person to rely upon an ex-parte report and urge that on merits the report may be seen. Apart from this, when in the first round



of litigation in C.W.J.C. No. 1620 of 2008 and analogous cases, disposed of on 8-12-2008 itself this Court had disapproved the use of the ex-parte enquiry report, then any action taken on the basis of that report once again would meet the same fate. We find it curious that in spite of this, the learned Single Judge by the order under challenge has held that the disapproval was not on merits, but on technical ground. We see no such distinction. Once a report is condemned as an ex-parte report, not to be used or relied upon, then it was not correct on the part of the learned Single Judge to say that unless the facts mentioned in the ex-parte report are contradicted effectively, it would be taken to be a valid report. A right order wrongly obtained is no order. That is a settled principle. Once in the first writ proceeding this Court disapproved the use of the report, the learned Single Judge in the second round of litigation could not sanctify or justify the use of the said report, for that would amount to ignoring the first order. Even an order passed by a learned Single Judge, more so as between the parties, would bind all subsequent proceedings and subsequent litigations, unless the said order is set at naught or modified in a subsequent proceeding by a superior court. It was not correct for the learned Single Judge to say that in spite of opportunity granted, as the writ petitioners had not brought anything on record before the Tribunal to contradict the facts, mentioned in the ex-parte report, it



must be taken that they had nothing to challenge. Such an approach would be destructive of elementary principles of law. The Tribunal could not have looked into the report. When the authorities tried to look into the ex-parte report on the earlier occasions, this Court disapproved it. That decision had attained finality. What the learned Single Judge did was virtually to give life to this dead document instead of burying the dead document. That was impermissible. We are, therefore, unable to uphold the order of the learned Single Judge

8. We, thus, set aside the order of the learned Single Judge and allow this appeal.

9. However, as all the contesting respondents have been working for over four years now, we direct the District Teacher Employment Appellate Authority (Tribunal) to take up the matter once again, and independent of the ex-part enquiry report or the facts, mentioned therein, after giving notice to all the parties, and after giving them opportunity to file written objections and/or explanations, decide the matter afresh within a period three months. If the Tribunal comes to a finding that the selection of the writ petitioners stood vitiated, then the contesting respondents, who are working, would continue to work, but in case the Tribunal comes to a finding that the selection and appointments of the writ petitioners were in accordance with law, and there was nothing wrong in their selection or the

selection process, then the Tribunal would order cancellation of appointments of the contesting respondents, and instead direct the writ petitioners to be reinstated in service, and grant them continuity of service , though not back wages.

9. With these observations and directions, this appeal stands allowed.

(Navaniti Prasad Singh, J)

B.K.Roy/- A.F.R.

(Nilu Agrawal, J)

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